

# **Report to the Board of Adjustment**

Prepared by the Maricopa County Planning and Development Department

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**Case: BA2006064**

Variance

Hearing Date:

October 11, 2006 (Continued from September 13, 2006)

Agenda Item:

7

Supervisory District:

3

\* Indicates revisions or new information since the August 9, 2006 hearing date

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**Applicant/Owner:**

Robert Flowers

**\*Request:**

**Variances to permit:**

- 1) An existing detached accessory structure (shed) to setback 16 feet from the side (south) property line where 30 feet is the minimum required,
- 2) An existing building separation distance (SFR/caretaker's quarters) of 8 feet where 15 feet is the minimum required,
- 3) An existing lot width of 20 feet where 145 feet is the minimum required; and
- 4) An existing detached accessory structure (shed) to setback 27 feet from the front (west) property line where 40 feet is the minimum required in the Rural-43 zoning district.

**These variances are requested from the following Zoning Ordinance Section(s):**

- 1) Section 503, Article 503.4.2
- 2) Section 503, Article 503.5.5
- 3) Section 503, Article 503.5.2
- 4) Section 503, Article 503.4.1a

**Site Location:**

34833 N. 3<sup>rd</sup> Street – (Desert Hills area)

**Site Size:**

55,766 square feet (1.28 acres)

**Existing Zoning:** Rural-43

**Current Use:** Single-family residence and caretakers quarters

**Citizen**

**Support/Opposition:** None known

**Staff**

**Recommendation:** 1, 2, & 4) Deny  
3) Approve with stipulations

**Existing On-Site and Surrounding Zoning:**

1. On-site: Rural-43  
North: Rural-43  
South: Rural-43  
East: Rural-43  
West: Rural-43

**Existing On-Site and Surrounding Land Use:**

2. On-site: Single-family residence and caretakers quarters  
North: Single-family residence  
South: Single-family residence  
East: Vacant  
West: 3<sup>rd</sup> Street/single-family residence

**Background:**

3. **Circa 1987:** A single-family residence was constructed on the subject site.
4. **October 1, 1998:** The current owner took possession of the subject site via a Warranty Deed recorded under docket **98-0882589**.
5. **May 9, 1999:** A Conditional Use Permit was approved by staff under case **CU 99-23** allowing caretaker's quarters on the subject property.
6. **May 20, 1999:** Building permit **1999032911-00** for caretaker's quarters was approved.
7. **January 19, 2006:** A complaint was received and violation case **V200600063** was opened by the Code Enforcement Division for multiple dwellings in a residential zoning district and construction without zoning clearances and/or building permits.

8. **February 17, 2006:** The owner applied for a Conditional Use Permit under case **CU2006008** to allow the continued location of a caretaker's quarters on the subject property.
9. **March 24, 2006:** The owner had a variance pre-application meeting with the Planning Department staff.
10. **June 6, 2006:** The owner applied for these variance requests.
11. **July 12, 2006:** The Board of Adjustment voted to continue this variance request case to the August 9, 2006 hearing date so the applicant could consult with staff and revise the site plan.
12. **July 21, 2006:** The owner provided staff with a revised site plan.
13. **August 9, 2006:** The Board of Adjustment voted to continue this variance request case to the September 13, 2006 hearing date so the applicant could consult with staff and revise the site plan.
- \*14. **September 13, 2006:** The Board of Adjustment voted to continue this variance request case to the October 11, 2006 hearing date so the applicant could consult with staff and revise the site plan.
- \*15. **September 13, 2006:** The owner provided staff with a revised site plan.

### **Findings:**

16. **Maricopa County Department of Transportation:** No response at the time this report was written.
17. **Flood Control District:** No objections to the requests.
18. **Environmental Services Department:** No response at the time this report was written.
19. **Drainage Administration:** No drainage concerns.
20. **New River Desert Hills Community Association:** Provided a letter of opposition to all variance requests, with the exception of what was formerly known as requests 5 & 10. It should be noted that the request formerly known as #5 is now request #3; and the request formerly known as #10 has been eliminated.

### **Site Analysis:**

21. The subject property is a flag shaped lot. The pole portion of the flag provides access up to the property from 3<sup>rd</sup> Street, passing between parcel 211-53-038H to the south and 211-53-038C to the north. The flag portion of the lot is rectangular in shape measuring approximately 321.04' x 155.10' x 321.04' x 142.36.' The total area of the entire lot is approximately 55,765.7 square feet. The property is nearly completely enclosed by pipe rail and chain link fencing. The site is level and free of any topographical hardships. Most of the natural vegetation has been removed and the site is either utilized for equestrian uses or is lightly landscaped.
- \*22. The site is currently developed with an approximately 3,100 square foot single-family residence, a 1,448 square foot caretaker's quarters, a 672 square foot shed, and a 200 square foot shade. There are various other equestrian related features on the site, including several fenced areas. Staff found a building permit for the caretaker's quarters issued in 1999, however no record of a building permit was found for the existing single-family residence. The owner currently has a Conditional Use Permit application in review for the caretaker's quarters. The initial request included an above ground pool and several accessory structures that have since been removed.



Aerial view of subject site and surrounding area

23. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback	40-feet	<b>27-feet</b>
Side Yard Setback	30-feet	<b>16-feet</b>
Rear Yard Setback	40-feet	122-feet
Street Side Setback	20-feet	N/A
Maximum Height	30-feet/2 stories	**
Minimum Lot Area	43,560 sq. ft.	55,766 sq. ft.
Minimum Lot Width	145-feet	<b>20-feet</b>
Lot Coverage	15%	9.7%
Minimum Building Separation	15-feet	<b>8-feet</b>

\*Standards indicated in **bold** do not meet minimum base zoning standards.

\*\* Information was not provided by owner.

## Land Use Analysis:

24. The subject site, which is zoned Rural-43, is located in the Desert Hills area of the County. The subject site is in the section bounded by Cloud Road, 7<sup>th</sup> Street, Carefree Highway and 7th Avenue. This area consists primarily of large lot, suburban residential homes with equestrian uses being common. Development in the immediate area is the result of lot splitting and overall the area does not follow a consistent pattern of development.
25. The nearest municipalities are the City of Phoenix and the Town of Cave Creek. The City of Phoenix corporate limits are approximately three-quarters of a mile southwest of the subject site. The Town of Cave Creek limits are approximately two miles east of the subject site. The immediate surrounding area is zoned Rural-43; however, commercial zoning exists just south and east of the subject property in the vicinity of 7<sup>th</sup> Street and Carefree Highway. The area immediately east of the subject site is currently undeveloped.
26. Staff research indicates that five Board of Adjustment cases have been heard within one mile of the subject site and of these; four were relevant to this case. Their summaries are as follows:
  - Case **BA2005130** was for variance requests to permit: 1) an existing detached accessory structure (garage) to setback 15 feet from the front (east) property line where 55 feet is the minimum required; and 2) an existing detached accessory structure (garage) to setback 5 feet from the side (north) property line where 30 feet is the minimum required in the Rural-43 zoning district. Both requests were approved by the Board of Adjustment with stipulations. This property is located approximately ½ mile northeast of the subject site at 35213 N. 10th Street.
  - Case **BA2004130** was a request for a variance to permit a proposed attached garage to an existing single-family residence to setback 35 feet from the street

side (west) property line where 53 feet is the minimum required in the Rural-43 zoning district. This request was approved by the Board of Adjustment with stipulations. This property is located approximately ½ mile northwest of the subject site at 102 W. Galvin Street.

- Case **BA2003050** was for variance requests to permit: 1) an existing building separation distance of 9 feet, 11 inches where 15 feet is the minimum required, 2) an existing building separation distance of 5 feet, 11 inches where 15 feet is the minimum required; and 3) an existing building separation distance of 14 feet, 8 inches where 15 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. This property is located approximately 500 feet north of the subject site at 35011 N. 3<sup>rd</sup> Street.
- Case **BA2001024** was for variance requests to permit: 1) a lot width of 125 feet where 145 is the minimum required, 2) a lot area of 39,875 square feet where 43,560 is the minimum required; and 3) an existing single-family residence to setback 15-feet from the side (east) property line where 20-feet is the minimum required. These requests were approved by the Board of Adjustment with stipulations. This property is located approximately ¼ mile northeast of the subject site at 635 E. Galvin Street.

## Plan Analysis:

- \*27. The Board of Adjustment voted to continue this variance request case to the October 11, 2006 hearing date so the applicant could consult with staff and revise the site plan to reflect the anticipated removal of several structures. The applicant was previously informed in the pre-application meeting as to where structures may be placed on the property without the need for variances. The elimination of a number of requests through the removal of several burro covers was discussed in that meeting. Since the last meeting of the Board of Adjustment, the applicant provided staff with a revised site plan showing that several of the structures in the west portion of the property had been removed. The most recent site plan revision also showed that a remaining shade cover was relocated to outside the required front yard. The removal of the structures and the relocation of the shade eliminated nine of the fourteen original variance requests. The removal of an above ground swimming pool prior to the August 9, 2006 hearing had eliminated one of the original requests.
- \*28. Request one is to allow an existing detached accessory structure (shed) to setback 16 feet from the side (south) property line, where 30 feet is the minimum required setback in the Rural-43 zoning district. This request came about due to a code violation regarding construction without zoning clearances/building permits. The property in question is flat and free of any notable topography or drainage features that might restrict the location of an accessory structure. In addition, the property is well over an acre in size, providing adequate room to locate structures while still being within the buildable portions of the property or within the required rear yard. Staff was unable to

find building permits for this accessory structure. Since this variance request was self-created, and alternative locations are available, staff's opinion is that there are no apparent hardships to justify the current location of the structure in question. Staff recommends that the owner find an alternative to this request and that the Board deny this variance.

- \*29. Request two is to allow an existing building separation distance (SFR/caretaker's quarters) of 8 feet where 15 feet is the minimum required building separation in the Rural-43 zoning district. This request also came about due to the aforementioned violation case for construction without permits or clearances. Since this variance request was also self-created and alternative locations are available, staff's opinion is that there are no apparent hardships to justify the current location and construction of the structure in question. Staff recommends that the owner find an alternative to this request and that the Board deny this variance.
30. Request three is to allow an existing lot width of 20 feet where 145 feet is the minimum required in the Rural-43 zoning district. This variance request may be traced back to a lot split that apparently created the unusual flag shaped lot that is the subject of this request. While no known permit record exists for the single-family residence constructed on the property, a permit for the caretaker's quarters was approved in 1999. Available records therefore show that at least one building permit and zoning clearance may have been erroneously granted. Staff is therefore of the opinion that there are special circumstances that may justify this request. Staff recommends approval of this request.
- \*31. Request four is to allow an existing detached accessory structure (shed) to setback 27 feet from the front (west) property line, where 40 feet is the minimum required setback in the Rural-43 zoning district. This request involves the same structure as in the first request. While staff is sympathetic to the owner's request, there are no apparent hardships to justify the current location of the structure in question. Staff recommends that the owner find an alternative to this request and that the Board deny this variance.

**Recommendation:** (BA2006064)

32. Staff recommends **approval** of variance request **3** based on the following:
- The relief requested is the minimum required necessary to provide the owner with full use and enjoyment of the property.
  - The request does not conflict with the intent of the Zoning Ordinance.

Subject to the following stipulations:

- a) General compliance with the revised site plan entitled "Flower Residence" dated September 13, 2006.

33. If the Board finds that a reasonable use of the property can be made without this variance, then this request should be denied.
- \*34. Staff recommends **denial** of variance requests **1, 2, & 4** based on the following:
- There is no hardship associated with these requests. Any hardship in this case is self-created due to the failure to obtain permits for the structures in question.
  - There are reasonable alternatives available to the applicant that would eliminate the need for these variances.
  - Granting these requests would confer a special privilege to the owner.
  - The request conflicts with the intent of the Zoning Ordinance and may have a negative impact on surrounding properties.
35. If the Board finds that a reasonable use of the property cannot be made without these variances, then these requests may be approved, subject to the following stipulations:
- a) General compliance with the revised site plan entitled "Flower Residence" dated September 13, 2006.
  - b) The owner shall obtain as-built permits for all structures within 120 days of Board approval.

gcb

**Attachments:** Case Map BA2006064 (2 pages)  
Zoning Map  
Assessor Map  
Site Plan (2 pages)  
Application  
Supplemental Questionnaire  
Flood Control memorandum  
Letter from NR-DHCA, INC. (2 pages)  
Photographs (2 pages)